

BEFORE THE FEDERAL ELECTION COMMISSION

2015 AUG 26 AM 10:48

In the Matter of)
)
MUR 6808)
Tootie Smith for Oregon)
Carol A. Russell in her official capacity as treasurer)
DISMISSAL AND CASE
CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6808 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

For the reasons set forth below, the Office of the General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss the allegations that Respondents Tootie Smith² for Oregon and Carol A. Russell in her official capacity as treasurer (collectively the "Committee"), violated 52 U.S.C. §§ 30118 and 30120.

¹ The EPS rating information is as follows:
Filed: May 12, 2014.

Complaint Filed: April 21, 2014. Response

² Tootie Smith was a 2014 candidate for Congress from Oregon's Fifth Congressional District. She was defeated in the general election.

1 In this matter, Complainant Brandon Shackelford alleges that the Committee accepted a
2 corporate contribution in the amount of \$1,000 from Mountain West Investment Corporation
3 ("Mountain West") on January 26, 2014. Compl. at 1. The Complainant notes that the
4 contribution was disclosed on page 7 of the Committee's 2014 April Quarterly Report, filed on
5 April 15, 2014. *Id.*

6 The Complainant also asserts that the Committee violated the Act's disclaimer provisions
7 by distributing yard signs and banners advocating Smith's candidacy without including a "paid
8 for" disclaimer. *Id.* at 3. Attached to the Complaint are two low-definition photographs. *Id.* at
9 5. The first shows a yard sign bearing the slogan "Tootie for Oregon," while the second shows a
10 banner with the same inscription, as well as directing the viewer to "www.TootieSmith.com."
11 *Id.* In neither case is there a visible disclaimer present. *See id.*

12 The Committee acknowledges that it accepted a prohibited corporate contribution and
13 failed to display a proper disclaimer. *See Resp.* at 1. The Committee explains that it realized its
14 error in accepting the corporate contribution the day after the 2014 April Quarterly Report was
15 filed and subsequently returned the contribution. *See Committee's 2014 Amended Pre-Primary*
16 *Report*, filed on May 8, 2014, at 11 (disclosing \$1,000 refund to Mountain West for "corporate
17 contribution").³ Additionally, the Committee indicates it ordered and then attached tape strips
18 bearing "Paid for by TOOTIE SMITH FOR OREGON Committee" to the signs and banners at
19 issue. *See Resp.* at 1.

20 Under the Act, a public communication is "a communication by means of any broadcast,
21 cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass

³ The Response includes an image of a check from the Committee's account, made out to "Mountain West Investment Corporation" in the amount of \$1,000, dated April 16, 2014. *See Resp.* at 2. The Response also includes an apparent copy of a letter from Ms. Smith, declining the alleged contribution, addressed to Jason Tokarski at the same address attributed to Mountain West in the Committee's FEC filings. *See Resp.* at 3.

1 mailing, or telephone bank to the general public, or any other form of general public political
2 advertising.” 52 U.S.C. § 30101(22); *see also* 11 C.F.R. § 100.26. Public communications “if
3 paid for and authorized by a candidate, an authorized political committee of a candidate, or its
4 agents” are required to state the communication was paid for by the candidate, committee, or
5 agent in question. 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(a)(1). In this case, the
6 Committee admits to violating the provisions of the Act by failing to include the requisite
7 disclaimer on a set of public communications.

8 Federal campaign committees and candidates for federal office are forbidden from
9 knowingly accepting or receiving corporate contributions. 52 U.S.C. § 30118(a); *see also* 11
10 C.F.R. § 114.2. Such contributions include “direct or indirect payment, distribution, loan,
11 advance, deposit, or gift of money, or any services....” 52 U.S.C. § 30118(b)(2); *see also* 11
12 C.F.R. § 114.1(a)(1).

13 The Committee states that it took prompt remedial action to remedy both alleged
14 violations by returning the check and adding proper disclaimers to its signs and banners.

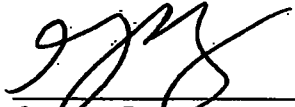
15 Accordingly, in view of the prompt remedial action taken by Respondents, the Office of
16 the General Counsel recommends that the Commission exercise its prosecutorial discretion,
17 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss the allegations that Tootie Smith
18 for Oregon and Carol A. Russell in her official capacity as treasurer violated 52 U.S.C. §§ 30118
19 and 30120. Additionally, the Office of General Counsel recommends that the Commission
20 approve the attached Factual and Legal Analysis and the appropriate letters, and close the file.

RECOMMENDATIONS

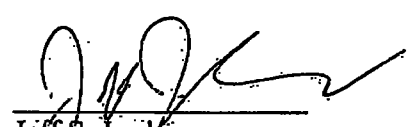
1. Dismiss, as a matter of prosecutorial discretion, the allegations that Tootie Smith for Oregon and Carol A. Russell in her official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30120.
2. Approve the attached Factual and Legal Analysis.
3. Close the file.

Daniel A. Petalas
Acting General Counsel

BY:


Gregory R. Baker
Deputy General Counsel

Date


Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration